

Application No.: 10/773,551
Amendment dated September 15, 2006
Reply to Final Office Action of June 16, 2006

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REMARKS

The Applicant respectfully requests entry of the above amendments, and consideration of the application, as amended.

By the above amendment, the Applicant amended claim 1 in response to a suggestion made by the Patent Office in the subject Office Action and amended claims 6, 12, 18, 20, 21, and 24 to address obvious typographical errors.

Claims 1, 3, 4, 6-9, and 11-24 remain pending in this application.

The Applicant wishes to acknowledge with appreciation the assistance that the Applicant's undersigned Agent received from Examiner Gwendolyn Baxter in a phone interview held on July 12, 2006.

1. Response to Advisory Action

The Applicant was somewhat dismayed and dumbfounded by the Patent Office's comments in the above referenced Advisory Action. The Patent Office stated that the amendments filed in the Response After Final, filed on August 10, 2006, would not be entered because "Applicant has not previously claimed 'the arm having a lower surface' nor the dependency of claim 24 being dependent upon claim 12." However, in the above referenced phone conversation, in a bona fide attempt to advance the prosecution of this application, the Applicant's undersigned Agent and Examiner Baxter discussed these very amendments. Specifically, first, the Examiner's 112 rejection of claim 1 was discussed. Though the Applicant did not agree with the Examiner's contention that the wording of claim 1 was indefinite, the Agent and the Examiner discussed the amendment that appears above, and in the Response After Final, to comply with the Examiner's request. Again, though the Applicant submits that the claim was clear as previously presented, the Applicant made the amendment requested by the Examiner. Therefore, the Applicant does not understand why this simple clarification requested by the Patent Office was a basis for the amendment not being entered.

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Second, the amendment to claim 24 was simply a correction of a typographical error that was not recognized earlier by the Applicant or the Patent Office. Surely, this correction to claim 24 only clarified the claims presented.

Repeated, unsuccessful attempts have been made by the Applicant's undersigned Agent to contact Examiner Baxter in order to address the issues raised in the Advisory Action and to possibly avoid the Applicant's payment of the RCE filing fee. However, in view of the upcoming due date, the Applicant has no choice but to file this RCE to avoid further fees and to ensure that the amendments and remarks are given their proper consideration.

Again, the Applicant was dismayed by the Patent Office's lack of proper consideration of the Applicant's attempt to comply with the Office's request and bona fide attempt to further this application toward allowance. The Applicant requests that, with the filing of this RCE, full and proper consideration of the above amendments and remarks below be provided.

2. Response to § 112 Rejections

On pages 2 and 3 of the Action, the Patent Office rejected claims 1, 3, 4, 6-9 and 21 as being indefinite pursuant to 35 US §112. The Applicant respectfully submits that claim 1 and its dependents are clearly drawn to the brace, and not to the combination of the brace and the arm. The Applicant believes that the above Amendment addresses these rejections.

3. Response to § 102 Rejections based upon Reiss

On pages 3 and 4 of the Action, the Patent Office rejected claims 1, 3, 4, 7, 11, 18, and 19 as pursuant to 35 USC §102 as anticipated by what is disclosed in U.S. Patent 5,622,927 of Reiss (herein "Reiss"). The Applicant respectfully submits that these rejections are inappropriate and requests that these rejections be reconsidered and withdrawn based upon the following comments and observations.

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Applicants' undersigned Agent typically refers to the MPEP for guidance when considering whether an anticipation rejection is appropriate. For instance, MPEP § 2131 defines the conditions under which an anticipation rejection is appropriate. These conditions were presented in the previous response and are omitted here for the sake of brevity. The Applicant submits that, contrary to the teachings of § 2131 of the MPEP, the "Utility Tray and Bathtub Caddy" of Reiss does not include "each and every element" of the invention recited in these claims, nor does Reiss show the invention "in as complete detail" as these claims.

With respect to claim 1, in the above-referenced Office Action, the Patent Office identifies brace 10 of Reiss as reading on the claimed brace. Specifically, with reference to Figure 2 of Reiss, the Patent Office identifies items 50, 24, and 70 of Reiss as the claimed "elongated element." Though specific items 50, 24, and 70 of Reiss do not in anyway correspond to the claimed elongated element, the Applicant is willing to submit that "pivoting arm" 18 of Reiss can be interpreted to be an "elongated element" as claimed. However, this is the only similarity of the Reiss device to the claimed invention.

The Patent Office then identifies item 22 as the "arm" supported by the claimed "brace." As described in the specification and illustrated in Figure 2 of Reiss, item 22 is "a book rest." (See, for example, 3:24 of Reiss.) For some reason, the Patent Office has associated the book rest 22 of Reiss with the "arm of an ornamental fixture" that the claimed invention supports. However, the Applicant submits that the "book rest" 22 of Reiss does not comprise an arm of any kind, and is certainly not an arm of an ornamental fixture as shown and described in the instant application. Thus, the Applicant submits that Reiss does not include "each and every element" of the invention recited in claim 1, nor does Reiss show the invention "in as complete detail" as claim 1.

As described throughout the present application, the claimed brace is intended to support the arm of an ornamental fixture, for example, to support the arm of the fixture from deflection and, most significantly, failure under the load of the ornamental fixture, such as a lamp or ornament. One exemplary aspect of the invention is shown in Figure

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2 of the present application illustrating a brace 60 supporting an arm 44 that supports an ornamental fixture 42. Clearly, book rest 22 of Reiss does not comprise anything related to arm 44.

Moreover, the common dictionary mean of the term "arm" clearly distinguishes the "book rest" of Reiss from the arm for which the present invention can be used. For example, Merriam-Webster's online dictionary provides the following definition of the term "arm" as used in claim 1:

arm: : something like or corresponding to an arm: as a : the forelimb of a vertebrate b : a limb of an invertebrate animal c : a branch or lateral shoot of a plant d : a slender part of a structure, machine, or an instrument projecting from a main part, axis, or fulcrum

[Emphasis added] [<http://www.m-w.com/dictionary/arm>]

Again, the "book rest" of Reiss is not "a slender part" of anything. For these reasons alone, this anticipation rejection is inappropriate. The Application respectfully requests that this rejection be reconsidered and withdrawn.

With respect to the rejections of dependent claims 3, 4, 7, and 11, the Applicants submit that these claims are not anticipated by Reiss for the same reasons that claim 1, from which they depend, is not anticipated. In addition, aspects of the dependent claims are not disclosed or suggested by Reiss. For example, with respect to claim 4, Reiss does not include "one or more projections on the elongated element." The Patent Office identifies Reiss's "thumb bolts" 70 as the claimed projections on the elongated elements. As shown in Figure 2 of Reiss, bolts 70 do not project from arm 18 of Reiss, but extend through bracket 24 to mount one half the bracket to the other. With respect to claim 11, contrary to the comments by the Patent Office, Reiss does not disclose a surface of arm 18 that comprises the claimed platform upon which an arm can be supported. The Applicants respectfully request that these and all the rejections of the claims dependent upon claim 1 be reconsidered and withdrawn.

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With respect to the rejection of claims 18 and 19 as anticipated by Reiss, the Patent Office supports this rejection in the first full paragraph on page 4 of the Action in stating, "the method is inherent since it is predicted upon the structure." However, first, as discussed above, the claimed structure is not anticipated by Reiss, therefore, the method of claims 18 and 19 are not inherently anticipated by Reiss.

Second, with respect to claim 18, the recited steps are not disclosed by Reiss and would clearly not be inherent in Reiss. For example, the method of claim 18 includes

mounting the arm of the ornamental fixture to the support and to the brace wherein the arm is supported by the at least one platform at a location distal the first end of the arm. [Emphasis added.]

However, there is no disclosure in Reiss of the mounting of any arms to a support. As discussed above, the Patent Office associated the "support arm" 12 of Reiss as a "support" and the "book rest" 22 of Reiss as the "arm." However, contrary to the Patent Office's arguments, the "book rest" 22 of Reiss is not mounted in anyway to, or even contact with, "support arm" 12 of Reiss. That is, the above mounting step is not practiced or inherent in the disclosure of Reiss. The Applicant respectfully requests that these rejections of claims 18 and 19 as anticipated by Reiss be reconsidered and withdrawn.

4. Response to § 102 Rejections based upon Anderson

On page 4 of the Action, the Patent Office rejected claims 1, 9, 18, and 24 pursuant to 35 USC §102 as anticipated by what is disclosed in U.S. Patent 1,531,266 of Anderson (herein "Anderson"). The Applicant respectfully submits that these rejections are inappropriate and requests that these rejections be reconsidered and withdrawn based upon the following comments and observations.

The Applicant submits that, contrary to the teachings of § 2131 of the MPEP, the "Electric Sign Fixture" of Anderson does not include "each and every element" of the

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invention recited in those claims, nor does Anderson show the invention "in as complete detail" as these claims.

With respect to claims 1 and 18, in the above-referenced Office Action, the Patent Offices identifies "tubular sections" 9 and 10, and "plate" 13 of Figure 1 of Anderson as reading on the claimed "elongated element" and "S member or brace" 21 of Anderson as reading on the claimed "platform." Though the Applicant is willing to submit that items 9, 10, and 13 of Anderson may be viewed as an "elongated element," the Applicant respectfully submits that "S member or brace" 21 of Anderson does not comprise a "platform" as recited in claim 1 and clearly illustrated and described in the instant application. As illustrated in Figures 4-7 of the instant application, one aspect of the invention includes a platform 75 comprising a plate 91. Clearly, S member 21 of Anderson does not comprise a platform as shown and described in the present application.

Moreover, the common dictionary mean of the term "platform" clearly distinguishes the "S member 21" of Anderson from the platform of the present invention. For example, Merriam-Webster's online dictionary provides the following definition of the term "platform" as used in claim 1:

platform: a usually raised horizontal flat surface

[Emphasis added] [<http://www.m-w.com/dictionary/platform>]

This definition of "platform" is clearly consistent of the use of the term in the present application and claims. Clearly, the S member 21 of Anderson does not comprise a "horizontal flat surface."

Also, contrary to the claimed invention, Anderson does not disclose an elongated element having an upper surface "that substantially conforms to the lower surface of the arm of the ornamental fixture," as claimed. In the Office Action, the Patent Office identifies "the angular disposed member or strap 20" of Anderson as the arm of an ornamental fixture. However elongated element 9, 10, and 13 of Anderson in no way

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conforms to the lower surface of strap 20. As discussed and illustrated throughout the present application, for example, as shown most clearly in Figure 2, the invention includes elongated element 60 having an upper surface 55 that conforms to the shape of the lower surface of the arm 44 that elongated element 60 supports. (See for example the description in paragraph 0043.) As shown in the Figures of Anderson, the shape of the Patent Office's elongated element 9, 10, and 13 is simply a straight tube having a shape that is in no way related to the shape of strap 20. Clearly, Anderson's elongated element does not "substantially conforms to the lower surface of the arm of the ornamental fixture," as claimed. The Applicants respectfully requests that these rejections of claims 1 and 18 as anticipated by Anderson be reconsidered and withdrawn.

With respect to the rejections of dependent claim 9, the Applicants submit that this claims are not anticipated by Anderson for the same reasons that claim 1, from which it depends, is not anticipated. The Applicant respectfully requests that this rejection be reconsidered and withdrawn.

5. Response to §103 Rejections based upon Reiss

On pages 4 and 5 of the Action, the Patent Office also rejected claims 6, 8, and 21 pursuant to 35 USC §103 as obvious in view of Reiss. The Applicant respectfully submits that these rejections are inappropriate and requests that these rejections be reconsidered and withdrawn based upon the following comments and observations.

With respect to claims 6 and 21, the Patent Office states that "it would have been an obvious matter of design choice to have made the elongated element sinuous shape" in view of Reiss. However, the Applicant submits that not only is there no teaching, motivation or suggestion in Reiss to make the reported elongated element 18 sinuous in shape or curvilinear, the Applicant submits that to make element 18 sinuous or curvilinear would interfere with the operation of the device disclosed in Reiss. Specifically, it is unclear to the applicant how "book rest" 22 could perform its desired function if mounted on a sinuous or curvilinear arm, that is, without having the book rest

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redesigned to prevent the book form falling into the tub. It is well established in the law that hindsight attribution of aspects of the invention to prior art that would interfere with the function of the prior art is inappropriate. Again, the Applicant respectfully requests that these rejections be reconsidered and withdrawn.

6. Response to §103 Rejections based upon Anderson

On page 4 of the Action, the Patent Office also rejected claims 12-16, 22, and 23 pursuant to 35 USC §103 as obvious in view of Anderson. The Applicant respectfully submits that these rejections are inappropriate and requests that these rejections be reconsidered and withdrawn based upon the following comments and observations.

With respect to claim 12, first, as discussed above with respect to the 102 rejection of claim 1 based upon Anderson (the arguments not repeated here for brevity), contrary to the statements made by the Patent Office, Anderson does not include a "platform" as claimed. Second, it would not be obvious to make the claimed arm 20 out of a "brittle material," such as glass.

Again, the Patent Office identifies "the angular disposed member or strap 20" of Anderson as the "arm" of an ornamental fixture. On page 6 of the Action, the Patent Office states, "It would have been obvious to one of skill in the art at the time of the invention was made to have made the arm glass." However, the Applicant submits that it only would have been obvious to make Anderson's arm out of glass if the person of skill were devoid of any knowledge of materials and their structural limitations. As is well known in the structural arts, brittle materials, such as glass, inherently cannot withstand a tensile load (that is, stretching). Such materials typically break under tensile loading and, for this reason, are typically not placed at locations in structures where tensile loading prevails. Member 20 of Anderson is under tensile loading in the sign support in which it is used. Member 20 is exposed to tensile loading due to the weight of the sign and the associated tubing 9 and 10. The loading on member 20 is underscored by the reference to member 20 also as a "strap," that is, a typical tensile member. Making this member 20 from a brittle material, such as glass, would, without

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question, cause the sign support to fail due to tensile fracture. The Applicant submits that it would thus not be obvious to make member 20 from a brittle material. The Applicant respectfully requests that this rejection of claims 12 and 22 as obvious in view of Anderson be reconsidered and withdrawn.

With respect to the rejections of dependent claims 13-16 and 23, the Applicant submits that these claims are not obvious in view of Anderson for the same reasons that claim 12, from which they depend, is not obvious. The Applicants respectfully requests that these rejections be reconsidered and withdrawn.

7. Allowable Subject Matter

In the first paragraph on page 7 of the Office Action, the Patent Office identifies the subject matter recited in claims 17 and 20 as allowable if rewritten in independent form. However, the appearance of this statement is a clear oversight by the Patent Office. In the previous amendment filed on February 27, 2006, the Applicant redrafted claims 17 and 20 in independent form and to include all the limitations of the claims from which they depend.

8. Conclusion

The Applicant believes that the above Amendment and Remarks address the objections and rejections that appear in the subject Office Action and places the application in condition for allowance. An early and favorable action on the merits of the application is requested.

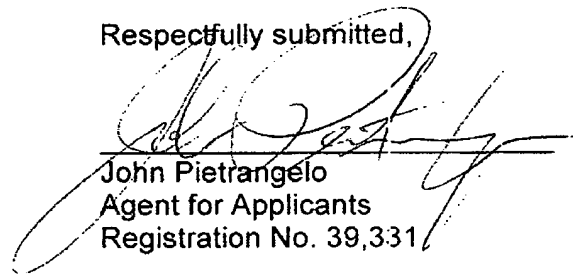
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If a telephone conference would be of assistance in advancing prosecution of the subject application, Applicants' undersigned Agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,



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